DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–ES–R8–2012–0075]

[4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Ashy Storm-Petrel as an Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list the ashy storm-petrel (*Oceanodroma homochroa*) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing the ashy storm-petrel is not warranted at this time. However, we ask the public to submit

to us any new information that becomes available concerning the threats to the ashy storm-petrel or its habitat at any time.

DATES: The finding announced in this document was made on [INSERT DATE OF FEDERAL REGISTER PUBLICATION].

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number **FWS–R8–ES–2013–0075**. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Bay–Delta Fish and Wildlife Office, 650 Capitol Mall, 8th Floor, Sacramento, CA 95814. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Mike Chotkowski, Field Supervisor, Bay–Delta Fish and Wildlife Office (see **ADDRESSES**); by telephone at 916–930–5603; or by facsimile **916-930-5654**. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and

Plants that contains substantial scientific or commercial information that the petitioned action may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register.**

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on whether we find that it is in danger of extinction throughout all or a significant portion of its range now (endangered) or likely to become endangered in the foreseeable future (threatened). As part of our analysis, we consider whether it is endangered or threatened because of the factors outlined in section 4(a)(1) of the Act.

Finding. We make a determination under the Act of not warranted for the ashy storm-petrel.

Previous Federal Actions

On October 16, 2007, we received a petition, dated October 15, 2007, from the Center for Biological Diversity, requesting that we list the ashy storm-petrel as a threatened or endangered

species under the Act and that critical habitat be designated concurrently with listing. On May 15, 2008, the Service published in the **Federal Register** a 90-day finding on the petition to list the ashy storm-petrel as threatened or endangered, and the 90-day finding determined that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (73 FR 28080). On August 19, 2009, the Service announced its 12-month finding that found, after reviewing the best available scientific and commercial information, listing the ashy storm-petrel was not warranted (74 FR 41832). The Center for Biological Diversity challenged this decision in the District Court of the Northern District of California on October 27, 2010 (*Center for Biological Diversity* v. *Salazar, et al., No. cv10-4861-DMR (N.D. Cal.))*. This challenge was resolved by a September 16, 2011, Stipulation of Dismissal, in which the parties agreed to dismissal of the action based on the court approval of a settlement in which the Service agreed to submit a proposed rule or a not-warranted finding regarding the ashy storm-petrel to the **Federal Register** by the end of Fiscal Year (September 30) 2013 (*In re Endangered Species Act Section 4 Deadline Litig., Misc. Action No. 10-377 (EGS), MDL Docket No. 2165 (D.D.C.))*. We published a notice of initiation of status review and solicitation of new information for the ashy storm-petrel in the **Federal Register** on November 28, 2012 (77 FR 70987).

Background

This finding is based upon the Species Report for ashy storm-petrel, a scientific analysis of available information prepared by a team of Service biologists from the Service's Bay–Delta, Carlsbad, Ventura, and Arcata Field Offices, the Farallon National Wildlife Refuge, the Region 8

Office, and National Headquarters Office. The purpose of the Species Report is to provide the best available scientific and commercial information about the species so that we can evaluate whether or not the species warrants protection under the Act. In it, we compiled the best scientific and commercial data available concerning the status of ashy storm-petrel, including the past, present and future threats to this species. As such, the Species Report provides the scientific basis that informs our regulatory decision in this document, which involves the further application of standards within the Act and its regulations and policies. The Species Report (including all references) and other materials relating to this finding can be found on the Bay–Delta Fish and Wildlife Website at: *http://www.fws.gov/sfbaydelta/* and at http://www.regulations.gov at Docket No. FWS–R8–ES–2012–0075.

The reader is directed to section IV of the Species Report for a more detailed discussion of the biology, taxonomy, life history, distribution, and current conditions of the ashy storm-petrel (Service 2013; *http://www.fws.gov/sfbaydelta/*). The Species Report evaluates the biological status of the bird and threats potentially affecting its continued existence.

The ashy storm-petrel (*Oceanodroma homochroa*) is a small seabird that ranges from about the California–Oregon Border to Islas San Benitos, Mexico. The 32 known breeding sites of the ashy storm-petrel stretch from Point Cabrillo, Mendocino County, California, to Islas Todos Santos Island, Ensenada, Mexico (Service 2013, p. 3). More than 90 percent of the population breeds in two population centers at South East (SE) Farallon Island and in the California Channel Islands (Service 2013, p. 3). Ashy storm-petrels occur at their breeding colonies nearly year-round and occur in greater numbers from February through October

(Service 2013, p. 3). The ashy storm-petrel feeds at night on euphausiids, other krill, decapods, larval lanternfish, fish eggs, young squid, and spiny lobster (Service 2013, p. 7).

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, and reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

A species is an endangered species for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range, and is a threatened species if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. For purposes of this analysis, we first evaluate the status of the species

throughout all of its range, and then consider whether the species is in danger of extinction or likely to become so in any significant portion of its range.

In making this finding, information pertaining to the ashy storm-petrel in relation to the five factors provided in section 4(a)(1) of the Act is summarized below, based on the analysis of these issues contained in the Species Report. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine the scope, severity, and impact of the potential threat. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

Range and Population Size

The best available information does not show any differences between the current and historical range of the ashy storm-petrel (Service 2013, pp. 8–9). The known range of the ashy-storm petrel has expanded slightly in recent years, with the confirmation of breeding at new locations at the northern end of the breeding range. Ashy storm-petrels may have been present at these locations historically, but adequate surveys had not been done to determine presence. Therefore, we do not consider these new locations to be an expansion of the historical range. Thus, the Service considers the at-sea geographic distribution (marine range) of the ashy storm-petrel to include waters off the western coast of North America from latitude 42° N (approximately the California–Oregon State line) south to latitude 28° N (approximately Islas San Benitos, Mexico), and approximately 75 mi (120 km) out to sea from mainland and island coasts (Service 2013, p. 9).

The current total global (restricted to California and Mexico) population size of breeding ashy storm-petrels at all known locations is estimated at between 10,000 and 11,000 individuals (Service 2013, p. 16). We estimate a total current global population of breeding and nonbreeding individuals between about 18,700 and 20,600 birds (Service 2013, p. 16). These estimates account only for known population occurrences. Unconfirmed and potentially unknown locations are not included in the estimate; however, the existence of sizeable unknown populations (on the scale of SE Farallon or Channel Islands) is unlikely, given the considerable survey efforts that have occurred (Service 2013, p. 16).

Population size and productivity (nesting success) are two measures of population status, along with trends in those measures over time. Because over 90 percent of the estimated

breeding population is restricted to SE Farallon Island and the Channel Islands, and most colony data are derived from those two locations, we will focus on those locations for population trends and productivity estimates. Research on productivity has been conducted only at SE Farallon Island and Santa Cruz Island (Service 2013, pp. 17).

We do not have any comparable colony size data for evaluating population trends before 1992, when standardized mist netting efforts began on SE Farallon Island (Service 2013, p. 22). The best data available are based on the mist net population index there, and show up and down variation from 1992 to about 2001. The Service's review of this data found a significant average increase in the ashy storm-petrel population index of 22.1 percent per year from 2000–2006, and a mean non-significant decrease in the ashy storm-petrel population index on SE Farallon Island of 7.19 percent per year from 2007 to 2012 (Service 2013, p. 21).We conclude that the population is currently experiencing fluctuations due to various factors, including avian predation. After assessing the best available scientific data, we have concluded that there is no consistent long-term trend in the species' population nesting on SE Farallon Island.

The Channel Islands population comprises an estimated 36 percent of the total ashy storm-petrel population (Service 2013, p. 26). We currently have no published studies of population trends on the Channel Islands. The best available scientific and commercial information consists of data collected using varying methods and incomplete analyses (Service 2013, p. 26). As a result, the available information does not allow us to conclude any trends for the Channel Islands population of the ashy storm-petrel. The Species Report has more detailed

information on population trends and productivity for the ashy-storm petrel (Service 2013, pp. 16–28; *http://www.fws.gov/sfbaydelta/*).

Analysis under Section 4(a)(1) of the Act

The Act requires that the Secretary determine whether a species is endangered or threatened because of any of the five factors enumerated in 16 U.S.C. 1533(a)(1). Our discussion of the threats categorized under each of these five factors is contained in the Species Report (Service 2013; *http://www.fws.gov/sfbaydelta/*). In the Species Report, we present detailed discussions of current and future threats to the ashy storm-petrel, and we considered how threats categorized under each of the five factors are affecting the species. For each threat, we describe the timing, scope, and severity. In the Species Report, we explain that the timing (immediacy) is recorded for threats, but it is not used in the calculation of threat impact. Additionally, threat impact is not calculated for threats where timing values are long-term future or past/historical. We describe the scope as the proportion of the ashy storm-petrel breeding occurrences that are reasonably expected to be affected by a threat within three generations, given continuation of current circumstances and trends. Within the scope of the threat, the severity is the level of damage to ashy storm-petrel populations or breeding occurrences that is reasonably expected from the threat within three generations, given continuation of current circumstances and trends.

All potential threats currently acting upon the ashy storm-petrel or likely to affect the species in the foreseeable future (and consistent with the five listing factors identified above) are

evaluated and addressed in the Species Report, and summarized in the following paragraphs. The reader is directed to section VI of the Species Report for a more detailed discussion of the threats summarized in this document (Service 2013; *http://www.fws.gov/sfbaydelta/*).

The Species Report evaluates the biological status of the bird and each of the potential threats under the five statutory factors affecting its continued existence. It was based upon the best available scientific and commercial data and the expert opinion of the Species Report team members. Based on the analysis and discussion contained therein, we conclude that climate change (ocean acidification, ocean warming, and sea level rise) (Factor A); invasive species (Factor A); human activities (Factor A); military activities (Factor A); overutilization for commercial, recreational, scientific, or educational purposes (Factor B); house mouse predation (Factor C); skunk predation (Factor C); barn owl predation (Factor C); common raven predation (Factor C); artificial light pollution (Factor E); oil pollution (Factor E); organochlorine contaminants (Factor E); and ingestion of plastics (Factor E) are potential threats that are having a negligible to slight impact on the ashy storm-petrel within the scope of the threat, both now and in the foreseeable future. These factors may have minor impacts on individuals in some locations, but they are not impacting the species as a whole. The full analyses of these possible threats is documented in the Species Report. Based on the analysis contained within the Species Report, we conclude that the best available scientific and commercial information does not indicate that these threats are causing a decline in the species or its habitat, either now or in the foreseeable future.

Predation Impacts

In our threat evaluation in the Species Report, we did find that burrowing owl predation (Factor C) and western gull predation (Factor C) are likely having slight to moderate impacts on the ashy storm-petrel within the scope of the threats. Burrowing owls have been known to frequent SE Farallon Island since at least the late 1880s; since systematic recording of burrowing owls began on SE Farallon Island in 2000, the highest abundance of burrowing owls has occurred in the years 2009–2012 (Service 2013, p. 46). From 2003 through 2010, predation by burrowing owls accounted for 40 percent of ashy storm-petrel predation, and this predation has surpassed predation by western gulls in recent years (Service 2013, p. 46). In the Species Report, we concluded that the timing of burrowing owl predation is ongoing and the scope is large because all individuals on SE Farallon Island are potentially exposed to the threat of burrowing owl predation (Service 2013, p. 47). Using data collected on SE Farallon Island in the period 2003–2012, we made a rough estimate of the effect that burrowing owls could have on ashy storm-petrels. Our calculations showed that around 10 percent of the ashy storm-petrel population could be eliminated over the next 40 years. This method used to calculate owl predation may underestimate the effects that owl predation has on petrels. Because the ashy storm-petrel population growth rate is sensitive to adult survival and it is likely that not all predated wings are found and included in the calculations, it is possible that population declines could be greater (Service 2013, p. 47). While this potential loss is considered of slight/moderate severity on the Farallon Islands, we conclude that, overall, the current best available scientific and commercial information does not indicate that burrowing owl predation is resulting in a downward trend to the species as a whole.

The Species Report further examined western gull predation on ashy storm-petrels at the Farallon Islands (Service 2013, pp. 48–49). The Farallon Islands hosts the world's largest western gull breeding population, although the population of western gulls on the islands has recently undergone a slight decline, numbering around 17,500 gulls (Service 2013, p. 48). Western gulls predated over 75 ashy storm-petrels per year on SE Farallon Island during the period 2003–2009, but predation by gulls has recently decreased to less than 60 individuals per year during the period 2009–2012, possibly due to the increase during that time of burrowing owl predation on petrels (Service 2013, p. 49). In the Species Report, we concluded that the timing of western gull predation is ongoing and the scope is large because all individuals on SE Farallon Island are potentially exposed to the threat of western gull predation (Service 2013, p. 47). Using data collected on SE Farallon Island from 2003 through 2012, we made a rough estimate of the effects that western gulls could have on ashy storm-petrels over the next 40 years. Our calculations show that around 10 percent of the ashy storm-petrel population could be eliminated (Service 2013, p. 49). However, because the ashy storm-petrel population growth rate is sensitive to adult survival and it is likely that not all predated wings are found and included in our calculations, it is possible that population declines could be greater. While this potential loss is considered of slight/moderate severity on the Farallon Islands, we conclude that, overall, the current best available scientific and commercial information does not indicate that western gull predation is resulting in a downward trend in the species population. In addition, the available scientific information does not indicate that the effects of burrowing owl predation and western gull predation are additive; as burrowing owl predation has increased on the SE Farallon Island, western gull predation has decreased, as shown in the Species Report.

In summary, the threats to ashy storm-petrel from burrowing owl predation and western gull predation at present and in the foreseeable future do not pose a threat to the long-term persistence of ashy storm-petrel. The threats operating individually do not place the species at immediate risk of extinction, nor do they appear likely to cause the ashy storm-petrel to become endangered within the foreseeable future through all or a significant portion of its range.

A number of conservation measures have taken place or are ongoing that minimize the impact on ashy storm-petrels from the potential threats listed above. These conservation measures are detailed in the Species Report (Service 2013; *http://www.fws.gov/sfbaydelta/*) and include an invasive species eradication program on the SE Farallon Island, human visitation reduction, survey monitoring restrictions, burrowing owl translocations, planning for mouse eradication on the SE Farallon Island, island spotted skunk removal, artificial nest site construction, artificial lighting restrictions, and oil pollution regulations.

Regulatory Protections

The Act requires that the Secretary assess available regulatory mechanisms in order to determine whether existing regulatory mechanisms are adequate to address threats to the species (Factor D). The Species Report includes a discussion of applicable regulatory mechanisms (Service 2013, pp. 54–64). In it, the Service examines the applicable Federal, State, and international statutory and regulatory mechanisms to determine whether these mechanisms provide protections to ashy storm-petrel. As described in the Species Report, several Federal and State statutes provide protections to ashy storm-petrels by requiring certain actions by land

managers. These actions protect habitat or address issues such as predation, military use, human visitation, and eliminating or reducing attractions, such as fixed high-intensity artificial light near petrel breeding sites and attraction lights on vessels.

Based on the analysis contained within the Species Report, we conclude that the best available scientific and commercial information does not indicate that the existing regulatory mechanisms are inadequate to address impacts from the identified potential threats.

Combinations of Potential Threats

When conducting our analysis about the potential threats affecting ashy storm-petrel, we also assess whether the species may be affected by a combination of factors. In the Species Report (Service 2013, pp. 74–75; *http://www.fws.gov/sfbaydelta/)*, we identified multiple threats that may have interrelated impacts on the ashy storm-petrel or its habitat. In the northern portion of its range, the greatest threat to ashy storm-petrel populations is from avian predation (Factor C). On SE Farallon Island, burrowing owls and western gulls prey on ashy storm-petrels breeding on the island. Together, these two predators may be causing short-term population effects on the ashy storm-petrel population on the island. Invasive New Zealand spinach (Factor A) restricts access to ashy storm-petrel nest sites for a portion of the population during the height of the breeding season, which likely results in some ashy storm-petrels remaining at the entrance of crevice breeding sites for a longer period of time. This longer entrance time further increases vulnerability of ashy storm-petrels to avian predation from burrowing owls and western gulls (Factor C). However, the current best available scientific and commercial information does not

show that these combined impacts are resulting in a long-term downward trend in the species population on the Farallon Islands.

Oceanic foraging habitat is expected to provide declining food resources for the ashy storm-petrel into the future. A number of oceanic threats, including warming sea temperatures and ocean acidification (Factor A), that will affect food resources available to the ashy storm-petrel throughout its range are expected to increase into the future. As the abundance of plastics continues to increase into the future, ingestion of plastics (Factor E) by seabirds will increase in unison with the effects of climate change to habitat (Factor A). Less food in the ocean due to warming sea temperatures and ocean acidification (Factor A) combined with artificial food consumption of plastics in the ocean (Factor E) will result in less nutritional food availability for the ashy storm-petrel. Lights from offshore energy platforms and squid fishing vessels will continue to attract ashy storm-petrels within their vicinity and can result in direct collisions and mortality (Factor E); moreover, ashy storm-petrels may be more vulnerable to predation by gulls after being attracted to artificial lights (Factor C), where they concentrate around lighted boats to feed on squid. The best available scientific and commercial information at this time does not indicate that less nutritional food availability will lead to more collisions with lights that result in mortality. Nor does it indicate that less food, combined with habitat changes due to climate change, will lead to increased vulnerability to predation, or otherwise result in losses to the population.

Sea level rise at the Channel Islands is predicted to inundate portions of sea caves, causing the future loss of nesting habitat in areas used by nesting petrels, potentially resulting in

some storm-petrels not nesting, or reducing nesting populations in those caves (Factor A). In the event of future skunk predation causing reproductive failure at any one of the caves (Factor C), and sea level rise reducing habitat for nesting populations in caves (Factor A), the Channel Islands population could suffer direct losses of populations and future breeding ability, a loss exacerbated by the lingering presence of organochlorine contaminants that have resulted in thinning of eggshells and thus impacts to hatching success (Factor E). Mortality may result from collisions with artificial light at Offshore Energy Platforms near the Channel Islands (Factor E). The best available scientific and commercial information at this time does not indicate that sea level rise in combination with skunk predation or collisions with lights will result in a decline to the species. Although we cannot fully quantify these future effects on ashy storm-petrel populations, they may be negative and may exacerbate other threats such as avian predation (Factor C) or an oil spill (Factor E) in any location where the species aggregates. However, at this point in time, the best available scientific and commercial information does not indicate that these threats in combination will result in a decline to the species.

All or some of the potential threats could act in concert to result in cumulative stress on the ashy storm-petrel population. However, the best available scientific and commercial information currently does not indicate that these threats singularly or cumulatively are resulting or will in the future result in a substantial decline of the total population of the species or have large impacts to the ashy storm-petrel at the species level. Therefore, we do not consider the cumulative impact of these threats to the ashy storm-petrel to be substantial at this time, nor into the future.

Determination

As required in section 4(a)(1) of the Act, we conducted a review of the status of the ashy storm-petrel and assessed the five factors in consideration of whether the ashy storm-petrel is endangered or threatened throughout all of its range. We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the ashy storm-petrel. We reviewed information presented in the 2007 petition, information available in our files, our 2008 90-day and 2009 12-month findings in response to the petition, and other available published and unpublished information, including information submitted subsequent to our 2009 finding. We also consulted with species experts and land managers at the areas where ashy storm-petrels occur.

We evaluated each of the potential threats in the Species Report for the ashy storm-petrel, and we determined that climate change (ocean acidification, ocean warming, and sea level rise); invasive species; human activities; military activities; overutilization for commercial, recreational, scientific, or educational purposes; house mouse predation; skunk predation; barn owl predation; common raven predation; artificial light pollution; oil pollution; organochlorine contaminants; and ingestion of plastics are potential threats that are having a negligible to slight impact on the ashy storm-petrel within the scope of the threat. In addition, our Species Report evaluated existing regulatory mechanisms and did not reveal an inadequacy of existing regulatory mechanisms for the ashy storm-petrel. In our threat evaluation in the Species Report, we did find that burrowing owl predation and western gull predation are likely having a slight to moderate impact on the ashy storm-petrel within the scope of the threats, but these threats do not

rise to the level of warranting listing under the Act because this predation may reduce the numbers of ashy storm-petrels at SE Farallon Island, but not to a point that the overall status of the species would be affected. In addition, the historical range for ashy storm-petrel is the same as the current range, so there has not been a loss in the range of the species over time (Service 2013, p. 8). Finally, population trend data does not show that the ashy storm-petrel is in a long-term decline.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." Based on our analysis conducted in the Species Report and summarized in this finding, and using the best scientific and commercial information available, we find that the magnitude and imminence of threats do not indicate that the ashy storm-petrel is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout its range. As described in the Species Report, the average lifespan of the ashy storm-petrel is unknown and reproduction is known to commence by age 6 (Service 2013, p. 3). Assuming the average age of first breeding is 5.5 years and adult survivorship is 0.88, then an ashy storm-petrel generation time would be 12.8 years, based on a published method of calculating generation time for birds (Service 2013, p. 29). Using a standard 3-generation (past, present, and future) timeframe to assess risk (*http://intranet.iucn.org/webfiles/doc/SSC/RedList/RedListGuidelines.pdf.*), we calculated this to be approximately 40 years (13-year generation time multiplied by 3 generations, and rounded) (Service 2013, p. 29). However, the long-term potential threat of sea level rise due to climate

change was assessed for 2030, 2050, and 2100 due to the temporal scope of existing climate model predictions (Service 2013, p. 29). For purposes of this finding, we have considered the foreseeable future for this species to consist of 40 years.

Therefore, based on our assessment of the best available scientific and commercial information, we find that listing the ashy storm-petrel throughout all or a significant portion of its range as a threatened or an endangered species is not warranted at this time.

Distinct Population Segment

Because we determine here that the ashy storm-petrel does not warrant listing throughout its range as an endangered or threatened species, we next assess whether the ashy storm-petrel is an endangered or threatened species throughout a portion of its range. We consider whether a distinct vertebrate population segment (DPS) or any significant portion of the ashy storm-petrel's range meets the definition of an endangered species or is likely to become endangered in the foreseeable future (threatened). Under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to or removal from the Federal List of Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened).

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We determine, based on a review of the best available information, that there are no population segments of the ashy storm-petrel that meet the discreteness conditions of the 1996 DPS policy. As stated in the Species Report, ashy storm-petrels are known to regularly forage up to 220 miles (mi) (354 kilometers (km)) from their breeding grounds and one individual has been located 466 mi (750 km) from its capture site (Service 2013, p. 7; *http://www.fws.gov/sfbaydelta/*). No population of ashy storm-petrel is physically markedly separate from any other population because each population is within the dispersal distance of another population. Moreover, the populations are not markedly separate as a consequence of physiological, ecological, or behavioral factors. In addition, even though the ashy storm-petrel's range includes parts of Mexico, it is not delimited by international governmental boundaries

within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. Therefore, we have determined that none of the populations meet the discreteness condition.

The DPS policy is clear that significance is analyzed only when a population segment has been identified as discrete. Since we found that no population segments meet the discreteness element, we need not conduct an evaluation of significance for the ashy storm-petrel.

Therefore, no population segments of the ashy storm-petrel qualify as a DPS under our policy and no population segments for the ashy storm-petrel are considered a listable entity under the Act.

Significant Portion of the Range

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be both (1) significant and (2) threatened or endangered. To identify only those portions that warrant further consideration, we determine whether substantial information indicates that: (1) the portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further

consideration. Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is threatened or endangered in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. Likewise, if the Service considers status first and determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. However, if the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range as threatened or endangered under section 4(c)(1) of the ESA.

We evaluated the current range of the ashy storm-petrel to determine if there is any apparent geographic concentration of potential threats for the species. We examined potential threats from climate change (ocean acidification, ocean warming, and sea level rise); invasive species; human activities; military activities; overutilization for commercial, recreational, scientific, or educational purposes; burrowing owl, western gull, house mouse, skunk, barn owl, and common raven predation; artificial light pollution; oil pollution; organochlorine contaminants; and ingestion of plastics. While some threats are affecting the species in only a portion of its range (for example, gull predation at SE Farallon Island or sea level rise affecting

sea cave nesting sites at the Channel Islands), these threats are not having substantial impacts to the populations of ashy storm-petrels at those sites and are not resulting in a decline of the species. Therefore, we found no concentration of threats that suggests that the ashy storm-petrel may be in danger of extinction in a portion of its range. In addition, the 32 known breeding sites of the ashy storm-petrel stretch from Mendocino County, California, to Ensenada, Mexico, and these breeding sites provide for representation, redundancy, and resiliency for the ashy storm-petrel. Therefore, we find that no portion of the range of ashy storm-petrel warrants further consideration of possible endangered or threatened status under the Act. No available information indicates that there has been a range contraction for ashy storm-petrel, and, therefore, we find that lost historical range does not constitute a significant portion of the range for this species.

Our review of the best available scientific and commercial information indicates that the ashy storm-petrel is not in danger of extinction (endangered) nor likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we find that listing this species as an endangered or threatened species under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the ashy storm-petrel to our Bay–Delta Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor this species and encourage its conservation. If an emergency situation develops for this species, we will act to provide immediate protection.

References Cited

A complete list of references cited in this finding is available on the Internet at *http://www.regulations.gov* and upon request from the Bay–Delta Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this finding are the staff members of the Pacific Southwest Regional Office and the Bay–Delta Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.).

Dated: _____September 25, 2013_____

Signed: __/s/__Rowan Gould_____

Acting Director, U.S. Fish and Wildlife Service

Billing Code 4310–55–P

[FR Doc. 2013-24170 Filed 10/21/2013 at 8:45 am; Publication Date: 10/22/2013]